



Department of State **TELETYPE**

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ACTION L-03

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FM AMEMBASSY TOKYO
TO SECSTATE WASHDC 0320

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E.O. 12065: NA
TAGS: ETRD, PGOV

SUBJECT: FOREIGN MINISTRY INTEREST IN DISCRIMINATION CASE,
LISA M. AVIGLIANO, ET AL., AGAINST SUMITOMO SHOJI AMERICA,
INC.

REVIEWED BY [Signature] DATE 9-30-82
XDS ☐ or XDS ☐ EXT. DATE _____
TS AUTH. _____ REASON(S) _____
ENDORSE EXISTING MARKINGS ☐
DECLASSIFIED ☐ RELEASABLE ☒
RELEASE DENIED ☐

PA of FOI EXEMPTIONS

1. SUMMARY: THE FOREIGN MINISTRY HAS ASKED THE EMBASSY FOR INFORMATION ABOUT AN OCTOBER 17, 1978 LETTER FROM DEPUTY LEGAL ADVISOR LEE R. MARKS TO ABNER W. SIBAL, GENERAL COUNSEL OF THE EQUAL OPPORTUNITY COMMISSION, IN CONNECTION WITH A SUIT BY LISA M. AVIGLIANO ET AL. AGAINST SUMITOMO SHOJI AMERICA, INC. END SUMMARY.

2. IN THE SUIT AVIGLIANO ET AL. APPARENTLY ASSERTED THAT SUMITOMO FILLED ALL OF ITS EXECUTIVE POSITIONS WITH JAPANESE MALES AND THUS DISCRIMINATED AGAINST THE PLAINTIFFS, ALL OF WHOM ARE WOMEN. SUMITOMO ARGUED THAT ARTICLE VIII OF THE U.S.-JAPAN TREATY OF FRIENDSHIP AND NAVIGATION PERMITTED THE COMPANY TO EMPLOY "ACCOUNTANTS, ATTORNEYS, AGENTS AND OTHER SPECIALISTS OF THEIR CHOICE." IN HIS LETTER TO SIBAL, MARKS WROTE, "THE PHRASE 'OF THEIR CHOICE' SHOULD BE INTERPRETED TO GIVE EFFECT TO THIS INTENTION, AND WE THEREFORE BELIEVE THAT ARTICLE VIII (1) PERMITS U.S. SUBSIDIARIES OF JAPANESE COMPANIES TO FILL ALL OF THEIR 'EXECUTIVE PERSONNEL' POSITIONS WITH JAPANESE NATIONALS ADMITTED
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TO THIS COUNTRY AS TREATY TRADERS." LATER IN THE LETTER

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MARKS STATED THAT THE FACT THAT SUMITOMO SHOJI AMERICA, INC. WAS INCORPORATED IN THE UNITED STATES DID NOT REMOVE IT FROM THE TREATY'S PROTECTION.

3. IN A JUNE 5, 1979 DECISION, JUDGE CHARLES H. TENNEY OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK UPHELD THE PLAINTIFFS' COMPLAINT UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1974.

4. SUMITOMO JAPAN IS SEEKING SUPPORT FROM THE FOREIGN MINISTRY WHICH HAS DENIED IT SO FAR BECAUSE THE MINISTRY CONSIDERS COMPANIES, LIKE SUMITOMO SHOJI AMERICA, INC., INCORPORATED UNDER U.S. LAW TO BE U.S. COMPANIES NOT ENTITLED TO THE PROTECTION OF THE JAPANESE GOVERNMENT. SUMITOMO HAS USED THE MARKS LETTER TO ARGUE THAT THE FOREIGN MINISTRY'S POSITION IS INCORRECT.

5. THE FOREIGN MINISTRY HAS ASKED THE EMBASSY FOR AN ELABORATION OF THE REASONS FOR THE POSITION THE DEPARTMENT TOOK IN THE MARKS-SIBAL LETTER. THEY PARTICULARLY WOULD LIKE TO KNOW WHAT PRECEDENTS AND POLICY FACTORS WERE CONSIDERED.

6. REQUEST THE DEPARTMENT PROVIDE THIS INFORMATION BY TELEGRAM AS SOON AS POSSIBLE. THE EMBASSY WOULD ALSO APPRECIATE ANY INFORMATION AVAILABLE ON THE PRESENT STATUS OF THE CASE IN THE COURTS, I.E. HAS THE DECISION BEEN APPEALED.

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